



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Lister-Petter Inc.
File: B-223947
Date: October 8, 1986

DIGEST

Protest is dismissed as untimely where the record makes a clear showing that the protester's basis of protest arose more than 10 working days prior to the filing of its protest. The protester's own date stamp is prima facie evidence of the date of receipt of the agency's final decision concerning the technical unacceptability of its proposal.

DECISION

Lister-Petter Inc. (Lister) protests a determination that its proposal was technically unacceptable under request for proposals (RFP) No. DAAK01-86-R-C060, issued by the Department of the Army for the acquisition of generator sets. Lister contends that the Army improperly found the proposal to be unacceptable in the absence of meaningful discussions with the firm. In this regard, Lister asserts that the Army failed to point out perceived deficiencies in its proposal and to give it an opportunity to revise its offer.

We dismiss the protest as untimely.

The RFP called for the submission of proposals to furnish 3 kilowatt (KW), 5KW, 15KW, and 30KW generator sets. Initial proposals were received and evaluated, and written discussions were conducted in the form of "Omissions and Clarifications" statements sent to the various offerors for response. By letter dated June 26, 1986, the contracting officer advised Lister that its proposal with respect to the 5KW, 15KW, and 30KW sizes was technically unacceptable because the proposal had not provided adequate reliability documentation and had not addressed specific points of concern in that area as indicated in the "Omissions and Clarifications" statement. The June 26 letter further provided that a revision of the proposal would not be considered.

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However, Lister then initiated a series of telephone conversations with the contracting officer as to the possibility that the Army would consider additional documentation affecting the acceptability of its proposal. In early July, Lister submitted such documentation to the Army, but it is apparent from the record that Lister was given no assurances by the contracting officer that the new information would, in fact, be considered. By letter dated July 18, the contracting officer reaffirmed her determination that Lister's proposal for the three sizes in question was technically unacceptable and clearly indicated that the additional information submitted earlier in the month had not been evaluated. Lister claims that it received the Army's July 18 letter on July 25, and, therefore, that its protest submission of August 8 challenging the agency's final determination of technical unacceptability was timely filed with this Office in accordance with our Bid Protest Regulations.

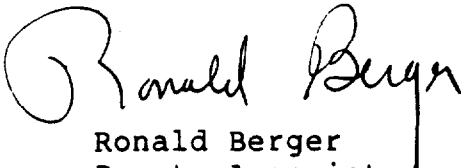
In this regard, our Regulations provide that protests alleging other than solicitation improprieties must be filed (received) no later than 10 working days after the basis of protest is known or should have been known to the protester, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). (Here, August 8 is the 10th working day after July 25, the date of Lister's claimed receipt of the Army's final determination.) Although this Office generally will resolve doubt surrounding the timeliness of a protest in the protester's favor, the record must reflect at least some reasonable degree of evidence to support the protester's version of the facts. MRL, Inc., B-218379.2, Aug. 2, 1985, 85-2 CPD ¶ 123; Lucco Art Studio Inc., B-217422, Feb. 27, 1985, 85-1 CPD ¶ 249.

The Army regards Lister's protest as untimely because, under the agency's view that the firm's basis of protest first arose upon receipt of the contracting officer's June 26 determination of technical unacceptability, the August 8 protest submission was filed well beyond the 10-day period prescribed by our Regulations. 4 C.F.R. § 21.2(a)(2), supra. The Army also asserts that, in any event, Lister was made aware of the contents of the Army's July 18 letter through a telephone conversation with the contracting officer on July 21. To the contrary, Lister contends that the contracting officer's subsequent oral statements led it to believe that, upon the submission of additional information, the June 26 determination might be reconsidered and, therefore, that the Army's final determination of July 18, received on July 25, provided the firm with its actual basis of protest. Lister asserts that its July 21 conversation with the contracting officer was insufficient to provide reasonable notice of the agency's final determination.

We need not resolve this particular dispute between the parties. Even accepting Lister's position as valid, we nevertheless must agree with Stewart & Stevenson Services, Inc., the interested party to this protest, that Lister's own documents belie its claim that it received the Army's July 18 letter on July 25. With its protest, Lister furnished a copy of that letter which, in the upper right-hand corner, carries a stamped date of "JUL 24 1986." It is reasonable to assume that this is Lister's own date stamp affixed to show its receipt of the Army's letter as the copy furnished came from its own files. This date, then, contradicts the firm's contention that it did not receive the July 18 letter until July 25.

We have repeatedly viewed a protester's date stamp as prima facie evidence of when it received particular agency correspondence giving rise to a basis of protest. See O. K. Lumber Co., Inc., B-209741, Feb. 17, 1983, 83-1 CPD ¶ 165; Asset Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150; J. F. Heinz, Inc., B-181325, June 11, 1974, 74-1 CPD ¶ 320. Hence, with nothing in the record to overcome Stewart & Stevenson's convincing argument that Lister's basis of protest arose no later than July 24, the protest is untimely and will not be considered on the merits because it was not filed until more than 10 working days after July 24. See Saco Defense Systems Division, Maremont Corp., B-218089, Mar. 7, 1985, 85-1 CPD ¶ 285.

The protest is dismissed.


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